

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

IN RE:

Anthony U. Giannasca

One West Bank, FSB, servicer for Deutsche Bank National Trust Company, as Trustee of the INDX Mortgage Loan Trust 2006-AR6, Mortgage Pass-Through Certificates, Series 2006-AR6, under the Pooling and Servicing Agreement dated April 1, 2006

VS.

Anthony U. Giannasca

CHAPTER 7
CASE NO. 11-19499-FJB

MOTION FOR RELIEF FROM STAY

To the Honorable Frank J. Bailey:

One West Bank, FSB, servicer for Deutsche Bank National Trust Company, as Trustee of the INDX Mortgage Loan Trust 2006-AR6, Mortgage Pass-Through Certificates, Series 2006-AR6, under the Pooling and Servicing Agreement dated April 1, 2006 (hereinafter "One West Bank, FSB"), your moving party in the within Motion, respectfully represents:

1. The movant has a mailing address of ATTN: Cashiering, 6900 Beatrice Drive, Kalamazoo, MI 49009-8070.
2. The debtor, Anthony U. Giannasca, has a mailing address of 9 Joseph Street, Medford, MA 02155.
3. On October 5, 2011, the debtor filed a petition under Chapter 13 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Massachusetts. The case was converted to one under Chapter 11 on November 29, 2011. On February 26, 2013 the case was

converted to one under Chapter 7.

4. The movant is the holder of a first mortgage on real estate in the original amount of \$463,500.00 given by Anthony U. Giannasca to Mortgage Electronic Registration Systems, Inc. on or about January 26, 2006. Said mortgage is recorded with the Middlesex County (Southern District) Registry of Deeds at Book 46906, Page 181, and covers the premises located at 16-18 Joseph Street, Medford, MA 02155. A copy of the mortgage is annexed hereto and marked as **Exhibit A**.
5. Said mortgage secures a note given by Anthony U. Giannasca to MortgageIT, Inc. in the original amount of \$463,500.00. MortgageIT, Inc. endorsed the note to IndyMac Bank, F.S.B, who further endorsed it to blank. The movant or its agent has possession of the note.
6. The mortgage was assigned by Mortgage Electronic Registration Systems, Inc. to Deutsche Bank National Trust Company, as Trustee of the INDX Mortgage Loan Trust 2006-AR6, Mortgage Pass-Through Certificates, Series 2006-AR6, under the Pooling and Servicing Agreement dated April 1, 2006. Said assignment is recorded at Middlesex County (Southern District) Registry of Deeds in Book 58685, Page 324.
7. There is a Declaration of Homestead recorded in Middlesex County (Southern District) Registry of Deeds in Book 42599, Page 420.
8. There is an Assignment of Rents provision in the mortgage which secures the obligation.
9. As of April 26, 2013, approximately \$673,535.46 in principal, interest, late fees and other charges was due with regard to the note and mortgage. As a result of this motion, attorney's fees and costs of approximately \$643.00 have accrued. This figure may increase as additional attorney's fees and costs accrue.

10. There are the following encumbrances on the property:

<u>Name of Creditor</u>	<u>Type of Lien</u>	<u>Amount Owed</u>
Movant	First Mortgage	\$673,535.46
Real Time Resolutions Inc.	Second Mortgage	\$100,000.00
Beacon Electrical Distributors, Inc.	Execution	\$7,500.00
Century Bank and Trust Company	Execution	\$58,546.81
City of Medford	Municipal Lien	\$4,607.44
City of Medford	2004 Tax Lien	\$1,099.62
Total Secured Encumbrances:		\$845,289.33

11. According to the debtor's schedules, the fair market value of the subject property is \$450,700.00. The liquidation value of the subject property is \$421,102.81, calculated as the fair market value less a reasonable realtor's fee (6%); deed stamps (\$2,055.19) and anticipated costs incurred for a real estate closing of \$500.00.

12. The note and mortgage are in default for the May, 2009 payment, and all payments due thereafter plus reasonable attorney's fees and costs and other charges incurred by the movant. The contractual arrears currently exceed \$200,000.

13. The movant seeks relief from stay as a secured creditor to enforce its rights under its loan documents and applicable law. In support thereof, the movant states that it is entitled to relief:

- I. Pursuant to 11 U.S.C. §362(d)(1) for cause on the basis that the debtor is in default on said contractual obligations; and
- II. Pursuant to 11 U.S.C. §362(d)(2) on the basis that there is no equity in the subject property, and there being no reorganization in prospect, the property is not necessary for effective reorganization.

WHEREFORE, the movant prays that it, and its successors and/or assigns, be granted relief from the automatic stay for the purpose of: (i) exercising its rights under its agreements with the debtor, and under applicable law, including, without limitation, taking possession of the mortgaged premises and/or foreclosing or accepting a deed in lieu of foreclosure of its mortgage on said premises; (ii) preserving its right to seek any deficiency to the extent permitted by state and federal law, including 11 U.S.C. §524(a); (iii) bringing such actions, including, without limitation, summary process proceedings, as are permissible by law; and (iv) that the Court order such other and further relief as may be just and proper.

Respectfully submitted,
One West Bank, FSB,
By its Attorney,

/s/ Brian D. Fleming
Brian D. Fleming, Esquire
BBO# 681472
HARMON LAW OFFICES, P.C.
P.O. Box 610345
Newton Highlands, MA 02461-0345
781-398-4800
mabk@harmonlaw.com

Dated: May 10, 2013

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

IN RE:
Anthony U. Giannasca

CHAPTER 7
CASE NO. 11-19499-FJB

CERTIFICATE OF SERVICE

I, Brian D. Fleming, Esquire, state that on May 10, 2013, I electronically filed the foregoing Motion for Relief from Stay and Proposed Order with the United States Bankruptcy Court for the District of Massachusetts using the CM/ECF System. I served the foregoing document on the following CM/ECF participants:

John Fitzgerald, Esquire, Assistant U.S. Trustee
Mark G. DeGiacomo, Esquire, Chapter 7 Trustee
James M. Liston, Esquire for Beacon Electrical Distributors, Inc.
Nina Ching, Esquire for the I.R.S.
Recovery Management Systems Corporation, Creditor
Michael Van Dam, Esquire for the Debtor
Eric K. Bradford, Esquire for John Fitzgerald

I certify that I have mailed by first class mail, postage prepaid, the documents electronically filed with the Court on the following non CM/ECF participants:

/s/ Brian D. Fleming
Brian D. Fleming, Esquire
BBO# 681472

Anthony U. Giannasca
16-18 Joseph Street
Medford, MA 02155

Anthony U. Giannasca
9 Joseph Street
Medford, MA 02155

Richard A. DeMarco
461 Riverside Ave
Medford, MA 02155
City of Medford

Office of the Tax Collector
85 George P. Hassett Dr.
Medford, MA 02155

Real Time Resolutions Inc.
1750 Regal Row, Suite 120
Dallas, TX 75235

Century Bank and Trust Company
400 Mystic Avenue
Medford, MA 02155

Bendett & McHugh
270 Farmington Avenue
Suite 151
Farmington, CT 06032

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

In re:

Anthony U. Giannasca,

Debtor

CHAPTER 7
CASE NO. 11-19499-FJB

Order Granting One West Bank, FSB, servicer for Deutsche Bank National Trust Company, as Trustee of the INDX Mortgage Loan Trust 2006-AR6, Mortgage Pass-Through Certificates, Series 2006-AR6, under the Pooling and Servicing Agreement dated April 1, 2006 Relief from the Automatic Stay and Leave to Foreclose Mortgage

This matter has come before the Court, and after full consideration, and no objections having been filed after proper notice, it is hereby ordered that the Motion for Relief from the Automatic Stay filed by One West Bank, FSB, servicer for Deutsche Bank National Trust Company, as Trustee of the INDX Mortgage Loan Trust 2006-AR6, Mortgage Pass-Through Certificates, Series 2006-AR6, under the Pooling and Servicing Agreement dated April 1, 2006 is hereby granted, and it or its successors and/or assigns may proceed to foreclose or accept a deed in lieu of foreclosure of the mortgage given by Anthony U. Giannasca to Mortgage Electronic Registration Systems, Inc., dated January 26, 2006 and recorded with the Middlesex County (Southern District) Registry of Deeds at Book 46906, Page 181, and which covers the premises located at 16-18 Joseph Street, Medford, MA 02155, and may exercise its rights under said Mortgage, including preserving its right to seek any deficiency to the extent permitted by state and federal law, including 11 U.S.C. §524(a), and may bring such actions, including, without limitation, summary process proceedings, as are permissible by law, all as set forth in its Motion.

Honorable Frank J. Bailey
United States Bankruptcy Judge